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COMMITTEE ON REVENUE
February 25, 2005
LB 231, 147, 358

The Committee on Revenue met at 1:30 p.m. on Friday, February 25, 2005, in Room 1524 of the State Capitol, Lincoln, Nebraska, for the purpose of conducting a public hearing on LB 231, LB 147, and LB 358. Senators present: David Landis, Chairperson; Matt Connealy, Vice Chairperson; Tom Baker; Abbie Cornett; Ray Janssen; Don Preister; Ron Raikes; and Pam Redfield. Senators absent: None.

SENATOR LANDIS: Ladies and gentlemen, welcome to the Revenue Committee today, taking testimony on three bills. Up first is LB 231, and Senator Lavon Heidemann. We go in this order: the introducing senator, proponents, opponents, neutral testimony, and then the senator has the right, the personal right, to close. It's non delegable in this committee. If you've got a cell phone, please turn it off. If you are going to testify today, here's what we do. We start by identifying yourself, spell your last name for the record, identify any group that you represent. If you've got something for the committee, ten is the right number to bring, but if you've only got one, we'll either copy it and pass it out or we will put it in the permanent record. If you've got an amendment, the same thing; bring us ten copies. But if you've got one, we can still make do. If you have your testimony all written out, handwritten, typed, doesn't make a difference, when you are done we would like to take it from you, copy it, return your notes back to you to improve the quality of the transcription of these hearings and to speed them and make them as cost-effective as we can. Got a nearly full committee today. Some people come in and out because they are introducing bills in other parts of the building but they may well be back before we are done hearing these measures. Don Preister, Ron Raikes, Pam Redfield, I'm Dave Landis, Matt Connealy, and this is Ray Janssen. This is the committee counsel, George Kilpatrick, and the committee clerk, Erma James. Senator Heidemann, come on up and get ready to do LB 231. How many are here to testify in favor of LB 231? In opposition to LB 231? And neutral on LB 231? Okay. Two, one, and zero. Lavon, you're up.

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SENATOR HEIDEMANN: (Exhibit 1) Good afternoon, Chairman Landis and members of the Revenue Committee. My name is Lavon Heidemann, spelled H-e-i-d-e-m-a-n-n. I represent District 1. I am here today to present to you LB 231, a bill that would provide some property tax relief. When I campaigned last summer this was the number one issue that people were concerned about. Property taxes have reached an all-time high and are forcing many in the agriculture sector to give up their dreams. LB 231 would drop the property tax levy for schools to one dollar and two and a half cents per \$100 of taxable valuation of property two years earlier than is currently in statute. The property tax levy change would begin in the fiscal years 2006-07, and continue through the fiscal years 2007-08. The property tax levy, by current statute, would go to \$1 in fiscal years 2008-09. The fiscal note with this bill demonstrates a shift of cost to the state from property taxes to state aid, which would be increased to make up the difference. I have a handout. The following handout was provided to me by the Legislature's Research Department. Taking into account the population of each state in K-12 school property taxes, Nebraska ranks tenth in per capita K-12 school property taxes. If you look at our surrounding states, Kansas ranks 27th, Iowa ranks 22nd, and South Dakota, 18th. It is apparent that our property taxes are much higher than our surrounding states. According to the Center for Rural Affairs, Nebraska is home to the nation's three poorest counties, and seven of the 21 poorest as measured by per capita income. The poorest counties in the state agriculturally dependent counties. Among the poorest one-third of Nebraska's 93 counties, agricultural land represents 64.5 percent of the property tax base. This legislation is an attempt to lower property taxes within the state of Nebraska. This lower tax levy amount takes place two years earlier than was initially put into law. I haven't heard the projected forecast yet today, but it is estimated that the state of Nebraska had approximately \$130 million to \$140 million in surplus before. We hope this is going to go up today. This is definitely demonstrating a trend toward a better economy for the state. And we believe that when we see higher forecasts, we talk about priorities. We've heard this up on the floor time and time again. I really believe that we need to take a look at our property taxes as one of our priorities. With that, I will close, and I would try to answer any questions that might be given to me.

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SENATOR LANDIS: Are there questions for Senator Heidemann?
A maiden voyage here, I think, Lavon?

SENATOR HEIDEMANN: Wow.

SENATOR LANDIS: Excellent. And by the way, it sounds like you've got some notes. A.J., if we could get a copy of those it will help us with the transcription. We'll return those to you, Lavon. Thank you. First testifier in favor. There are two, I believe.

NATHAN BARTELS: My name is Nathan Bartels, B-a-r-t-e-l-s. I am an ag producer and landowner from Elk Creek, Nebraska. First, I would like to greet you, Senator Landis, and the members of the Revenue Committee. I'm here today on behalf of Nebraska Farm Bureau Federation in support of LB 231. First, I want to thank Senator Heidemann for introducing LB 231. Of all the bills introduced this session that address property taxes and levy limits, to my knowledge this is the only bill that attempts to reduce property tax paid by landowners. It should come as no surprise to the members of the Revenue Committee that property taxes continue to frustrate ag landowners and producers. In rural areas, ag property and taxpayers are paying the majority of taxes to fund local services. Because of this, taxes on ag land in Nebraska are near the highest in the nation. An analysis performed for Nebraska Farm Bureau last year showed the average property taxes paid per farm in Nebraska were higher than any of our neighboring states. Property taxes paid to support schools are especially a thorn to farmers and ranchers. Farmers do not benefit any more than the rest of society from providing children with an education, yet in many systems they shoulder the greater share of the taxes. A few years ago, the Legislature, recognizing property tax payers' frustrations, set out a policy course to reduce property taxes and set the \$1 levy as the appropriate levy for schools. Property taxpayers appreciated the Legislature's efforts, and the \$1 levy became the benchmark for progress in reducing property taxes. We recognize that financing the state's budget and schools has, and continues to be, a struggle. We were willing, as property owners, to share the pain and accept the increase in levies on a temporary basis to help make ends meet even though we believed that relaxing the limits was a step backwards in

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reducing property taxes. We would like to think that the last few years were particularly difficult and unusual times. To us, it appears the economic picture is looking brighter. If that is the case, and the forecast for the state's revenues improve, we would ask the committee and the Legislature to consider the approach taken in LB 231 to again set the state on the policy course to provide property tax relief. Thank you for the opportunity to provide our comments. I would be happy to answer any questions you might have.

SENATOR LANDIS: Thank you, Mr. Bartels. Let's see if there are questions for you. And it looks to me like you've got some notes. Could we either copy those or...

NATHAN BARTELS: Yeah. Sure.

SENATOR LANDIS: Would that be okay with you?

NATHAN BARTELS: Sure.

SENATOR LANDIS: Thank you, Mr. Bartels. Next testifier in favor. And, Mr. Bartels, would you like those back, by the way?

NATHAN BARTELS: Yeah.

SENATOR LANDIS: That would be great. Okay.

KENNETH BOSWELL: (Exhibit 2) I'm Kenneth Boswell, B-o-s-w-e-l-l. Thank you, Chairman Landis and members of the Revenue Committee, for presenting my views here today. First of all, again, I'm Kenneth Boswell, a farmer from Shickley, Nebraska, here to express my support for LB 231. I currently serve on the Aurora Cooperative board of directors and the Nebraska Farm Bureau Federation state board of directors. Today, though, I am presenting testimony on my own behalf, not as a representative of these boards. I support LB 231 because it is a way to help reduce my property tax burden, which has increased by 14 percent since 2002. This is on the same number of acres without improvement to structures or anything. This increase is on top of a 60 percent increase in my fuel cost, a 28 percent increase in fertilizer cost, and chemical and repairs have had substantial increases, as well, over the past year.

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This cost increase has come while I have experienced a decline of \$1.20 per bushel for the price of my corn, and between \$3 and \$4 for a bushel decline in the price of my soybeans since the spring of 2004. The following is an example of the tax burden that I face. I have a 6-acre acreage that I own that I rent the house out on and use the machine shed for storage. Using the rent value from a building of one of my landlords to establish a value for rent, I pay 15 percent of my rental income to property taxes on this piece of property. My total real estate bill for 2004 on the 246 acres that I own was \$7,555.26, and this is a substantial cost to my operation. For these reasons I support LB 231 as it is currently written. Thank you again for this opportunity and I will try to answer any questions you may have.

SENATOR LANDIS: Ken, let's see if there are some questions. Thank you, Mr. Boswell, for making the effort to get in today. Appreciate your testimony.

KENNETH BOSWELL: You're welcome.

SENATOR LANDIS: Next testifier in favor? In opposition.

DON TUZIW: (Exhibit 3) Good afternoon, Mr. Chairman, members of the committee. My name is Don Tuziw; you spell it D-o-n T-u-z-i-w; pronounce it just like I did. I represent myself. I am opposing the bill in its present form. I think it's time to quit nickel-diming it down like the gas stations do. They raise it and then they bring it down, nickel...a penny at a time. It's time to go back to \$1. And I urge you to do this. And I want to back it up. In the handout I have data that even during the hard times, my school district has accumulated from 1998, from \$3.9 million in general fund surplus--I call it surplus--to the end of August 2004, I give you, let you guess, \$17,250,000. Yes, sir. This is not a huge district. And I attribute this to manipulation of reporting. Financial statements, budgets, and audits, and none of them are being correlated at this level. You look at those three documents and they all have different financial position of the district--any district. I'll give you the example of the one that is a major litigant against the state for not getting enough money from the state--Omaha. General fund, beginning balance at 2004, \$56.7 million that is left over

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in general fund. Ending balance, \$68 million. That's \$12 million and that is not all because the audit report indicates quite different. Bond fund, beginning balance...oh, and something else, no money in the treasurer's hands--zero. At the beginning and at the end. And I just picked up from my...because Omaha, OPS, spreads over more than one county. They claim that they are getting weekly. I don't care whether they get it daily. There are still some cash left in the treasurer's hands. Even if it is one dollar, it should be reported. So here is the discrepancy, what's causing it. So there is more money involved. And throughout all these funds...it's in the handout, there is no sense in me reading out...there is \$200 million at the end of 2003 in all the funds that are laying around just in one district, and they are suing you and me and the state of Nebraska for not getting sufficient amount of state aid. I urge you to drop it to \$1 and it's not going to make a dent in their financial positions.

SENATOR LANDIS: Are there questions for Mr. Tuziw? Thank you, Don. Appreciate your making an attempt to get in today.

DON TUZIW: Thank you. Thank you for your time.

SENATOR LANDIS: You bet. Other opponents to this measure? Is there neutral testimony on this measure? Senator Heidemann to close.

SENATOR HEIDEMANN: Thank you very much. Just in closing, I want to say that I do believe that we maybe need to look at this. I realize this is not a small fiscal note by any means. We do hope the revenue picture looks really good today and make our life in Appropriations a little bit easier. But I think it is something we need to look at, but as I was...I'm fresh up here and off of a campaign, time and time again I heard the issues about property taxes and people thinking that we rely too heavily on property taxes in this state, and they continue to see them going up because of rising valuations. And even after I was elected I was approached by a farmer that was actually not in my district but in Senator Byars' district, and he lived south and west of Beatrice, and he owned a farm on the Kansas border. And the only thing that separated his farm was an imaginary line, and that was the border. And on one side of

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the border in Nebraska he paid \$17 an acre in property taxes and that was in Nebraska and in Kansas he paid \$4. And as I was campaigning there I ran across an older gentleman that had sent their sons, and it was a very well-run farming operation, and they sent their son down to Missouri to farm because the property taxes were half down there. And I think we're seeing that more and more because I think the property tax burden in Nebraska is just higher than I hope it needs to be. I realize we need to have money to run our schools and our local government, but I think it is something we need to look at and I would urge you to look favorably upon LB 231. Thank you. Any more questions?

SENATOR LANDIS: Are there questions? Thank you very much, Lavon. Appreciate it. That closes the hearing on that bill. Let's move to Senator Schrock's bill. How many are here to testify in favor of LB 147? In opposition to LB 147? And neutral on LB 147? Thank you.

SENATOR SCHROCK: Are you ready?

SENATOR LANDIS: I am ready.

LB 147

SENATOR SCHROCK: Mr. Chairman, members of the Revenue Committee, for the record, it's Friday afternoon and I made a couple of phone calls and nobody wanted to come in. I don't know if they don't like this idea, or what. But in the past I have always had a couple of machinery dealers show up. But I am serious about this, and it's something that I would like get done before I leave the Legislature, and I have a proposal for you. First of all, I think you should take a look at the big sheet. (Exhibit 4) If you can see where any of the states around us tax personal property the way we do, have at her. But Iowa doesn't tax agricultural personal property; Kansas doesn't tax agricultural personal property; Colorado doesn't. South Dakota does. Wyoming and Missouri tax it to a different degree. George, you are shaking your head yes. But it's a little different. It's a little different but I don't think it is as punitive. So we have the dilemma; we are the only state that taxes agricultural personal property in the area. And I might say, even nationwide there is very

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few states that tax agricultural personal property. Why? You know, one of the biggest reasons is a lot of our machinery is seasonal. You take a combine, six, eight weeks out of the year max. You take a planter, maybe three or four weeks. You take a cultivator, maybe a couple weeks. It's specialized equipment. You can't use it year-round. We're not construction people where we use something year-round; we're farmers. And the burden is huge. Now, I introduced LB 922 last year, and I'm going to throw that concept at you again because this bill, if it would pass like it is now, would cost our local governmental entities \$44 million in lost revenue. We can't take that hit; I understand that. Does the state have \$44 million to do it? Well, maybe they do and maybe they don't, but I don't think ag has got the political muscle to do it anyway. So we could go back to LB 922, like I said last year, that would put ag land values at 85 percent of market value instead of 80 percent of market value, and this would only be about a \$4 million gap then. And I think that's enough loose change, we could live with that. If you wanted to be technical, you could make it 85.5 or 86. But if you put this out with eliminating personal property taxes and raise ag land values to 80 percent of market value instead of 85, I don't think that would be a bad deal and let me tell you why. Most of the agricultural machinery in this land is owned by people that till the soil, like Senator Raikes and Senator Connealy was, Senator Baker, got dirt beneath our fingernails; we get muddy; we get greasy. It's owned by...the machinery is owned by farmers. Who owns the land? I would guess about half of it is owned by absentee landowners. A lot of them don't even live in the state. Who are the two biggest landowners in the state of Nebraska? I think it's the Mormon Church and Ted Turner. Do you care if they pay a little more property taxes? I sure don't. Now, there are a lot of games played with farm machinery and I play some of them myself. If you want to talk to me one-on-one, I'll tell you how you can get out a little of it. I can't...I haven't figured out how to get out of all of it but I can get out of some of it. I represent four counties on the Kansas border and I hear the property tax debate. I just caught a little bit of the last deal. But I can tell you, if you've got a farm in Kansas and a farm in Nebraska, your machinery is going to be in Kansas because they don't tax it there. Now, is that the kind of games we want to be with? Now, you can raise real property as high

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as you want and complain about it all you want, but at least there is no way to play games with it, and you know. Farmers are some of their own worst enemies here because we are the ones that make ag land values high because we bid it up when it comes up for sale, but there are always a few Omaha people come out and bid against it, too. You have the subdistrict and a farmer sells the land for a development, he's got to reinvest or he is going to have a big tax problem. So they come out and bid up on land in my area because they sold some land for development, so you know that. Now, how big an impact in this? I passed out a sheet here. (Exhibit 5) This is the actual list price of a new combine, and it is a big combine. It is sold by John Deere. The combine itself, just the base unit itself is \$255,000. Now, machinery dealers are like car dealers; the stakes are just higher. There is a mark up here, probably similar to automobiles. The cornhead, which is next described, is \$63,000. And the flexhead, which is 35 foot, is \$33,000. Now, you can say, well, this is a big machine; it doesn't matter. Well, if Senator Raikes was to replace his combine with what would be called at that time a 9660, and this is a 9860, it would be about \$50,000 less. He would probably have an 8-row cornhead on it instead of a 12, and a 25 of 30-foot flex platform. And that's a similar size machine Senator Baker is running. And I run one that's about halfway in between. So take your pick. I don't want this bill to be self-serving. I want it to be for the ag producers in this state. That's a lot of money to pay taxes on. You can go to the courthouse and complain about paying taxes on a car, but start paying taxes on one of these. Now, what is the ramifications of taxing machinery like this? A lot of combines now are being leased. What is it? Machinery...Senator Raikes, help me out...is machinery.com leases combines in Nebraska now? They come from other states. You can get their address...you can look at the Farm Journal or Successful Farming magazine, and they'll advertise in there. They are leasing out combines. And you can lease them from them, but they don't keep them in Nebraska when harvest is over. Why would they pay taxes on them? We have custom harvesters in Nebraska, but they don't tax their combines in Nebraska. So you are pitting our farmers against people who are leasing combines out of state, and you are pitting them against custom harvesters who don't live in Nebraska, or if they do live in Nebraska they've got enough common sense not to keep their machinery

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here. And I think if you keep your machinery out of the state at least six months out of the year, you don't have to tax it. You can't have them here come January 1, but that's not a big deal. So you've totally wiped out the custom harvesters in the state of Nebraska. The people that come through with the combines to cut wheat in the summertime, they come back in the fall to harvest corn and milo and soybeans. You've totally wiped them out. They don't pay taxes on it. The only saps that pay taxes is the resident Nebraska farmer who owns the machinery. And I'm getting tired of paying taxes on it and I have friend who are, and I might just lease one of these machines one of these days and quit owning these things. If you raise my property taxes from 80 to 85 percent of the market value, then I don't have a choice. But I don't have to buy the land. If I don't like the taxes, I can sell it. So this is something that I...was a burr under my saddle in 1991 when I came here; it's still a burr under my saddle. I'll pay the higher property taxes; just get the burden off personal property. If you will put this out of committee I'll make sure it gets prioritized. Now Farm Bureau, they are sitting back there scratching their head and wondering what to do with this. Well, it's taxes either way, one way or the other. But at least you get about...at least you are going to have a shift to absentee landowners. And so I beg you to do something with this. I'll cooperate with you on any kind of amendments you want. I'll pay the taxes. The dollar amount for me wouldn't matter either way. I don't think it would make Senator Raikes any difference either. But get the personal property tax monkey off the state of Nebraska's farmers because we're smart enough that we can lease it from somebody in a different state or we can take it out of state or, in the case of some of my constituents, we can have two farms, one in Kansas and one in Nebraska, and we can play games with you. It is a bad tax. It needs to be thrown out. I will pay the real property tax burden if you shift it, and not complain. But let's get the personal property tax off. It's bad. It's...and then irrigation equipment. We talk about how efficient center pivots are. Well, you're taxing them too. I mean, we not only pay real estate tax on the land, we pay tax on the irrigation equipment. In the western half of the state where we need to conserve water, the best tool we can use is to put a center pivot on. Well, they cost \$50,000. And you've got to tax them for seven years. That's a big disincentive for owning one. I would

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like for us to have an incentive to get people to convert their gravity land to irrigation, and this is a disincentive we can take off to do that and it will help us conserve water. So do you have any doubt about how I feel about this? (Laughter) And am I wrong? If I'm wrong, tell me.

SENATOR LANDIS: Questions for Senator Schrock? Senator Raikes.

SENATOR RAIKES: Ed, I assume at...okay, you compared construction equipment, but they pay both sales tax and property tax.

SENATOR SCHROCK: I understand that.

SENATOR RAIKES: I assume at some point there was a deal on...

SENATOR SCHROCK: I was in on that. Senator Landis was probably in on that. At one time personal property tax was off but sales tax was on.

SENATOR RAIKES: And what about...what about, who went back to that?

SENATOR SCHROCK: Well, we had that constitutional issue back when Governor Nelson was first Governor.

SENATOR RAIKES: Well, you mentioned real estate...replacing it with real estate. What if you took off personal property tax and did the sales tax?

SENATOR SCHROCK: No. Because I'll buy my machinery in Kansas and then you hurt Nebraska's dealers. Now, I'm supposed to pay sales tax on that just like I am catalogue sales and Internet sales. But you are not going to collect it and you're going to have people play games with it. It just doesn't work. As a matter of fact, when we had sales tax on farm machinery, I used that for leverage. I told my local dealers, if you don't sell it to me for a little cheaper I will buy it in Kansas and I'll pay the sales tax. Now, they caught a few people but I would guess 95 percent of them that did it never got caught, day one. You can't track it any more than you can Internet or catalogue sales.

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SENATOR RAIKES: Okay. Thank you.

SENATOR LANDIS: Other questions? Thank you very much. Appreciate it Ed. Let's see if there are testifiers in favor? In opposition.

SENATOR SCHROCK: It's Friday afternoon. I didn't bring anybody with me.

NANCY ULMER: (Exhibit 6) Good afternoon, Senator Landis and members of the Revenue Committee. My name is Nancy Ulmer, U-l-m-e-r. I'm the Hamilton County Assessor and also the legislative representative for the Nebraska Assessor's Association. Agricultural equipment is currently exempt from sales tax. If it becomes exempt from personal property tax, I feel it will challenge our level of equality, namely with commercial and industrial personal property, as well as the railroad and public service personal property. This could also jeopardize the valuation of cell towers statewide. In Hamilton County, for 2004, the valuation from agricultural personal property was approximately \$33.75 million. Commercial and industrial personal property was approximately \$26 million. Public service and railroad personal property was approximately \$11.5 million. Would this mean we could lose valuations from cell towers throughout the state, as well as all the other industrial and commercial personal property? Ag property is 3.5 percent of Hamilton County's valuation, with the total personal property being approximately 7.6 percent of the valuations. By exempting ag personal property, there would definitely be more of a financial burden on the real property owners. Hamilton County's tax rate for 2004 was .269990. Without ag personal property, it would have been .280069. Without any personal property at all it would have been .292213. That is only the effect on the county portion of the levy. All political subdivisions will be greatly affected. I would urge you to oppose LB 147. I will be happy to answer any questions.

SENATOR LANDIS: Questions for Nancy? Thank you, Ms. Ulmer. Appreciate your being here.

NANCY ULMER: You're welcome.

SENATOR LANDIS: Next testifier in opposition.

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LARRY DIX: Senator Landis and members of the Revenue Committee, my name is Larry Dix. I'm executive director of the Nebraska Association of County Officials. The NACO board has voted to oppose this legislation. And certainly Senator Schrock brings up some interesting comments about the issue of ag property, and we constantly have these discussions within our group of shifting from one to the other. Certainly this would create a shift in some counties that are probably at their levy limit. There isn't any shift. It is just flat-out a loss of the base, if you will. And when we have that discussion, and over the years that we've looked at that, at some point in time, and I don't know what that point in time is, but we're sort of heading for a train wreck, I think, in the state of Nebraska because the increased burden that we continue to shift to real estate, somewhere we're going to have to look at the whole concept. My belief, at least, look at the concept of all of our tax bases and where we're coming from. And I know this committee, time and time again, we have ideas that come forward, but we never really seem to get anywhere in solving that issue. But I've got to tell you, in ten years from now we're sort of headed for a train wreck, I think, on our property tax system and our reliability on that system. So I would be happy to answer any questions we could...

SENATOR LANDIS: Larry, I've got to tell you, I find Ed's proposition relatively intriguing. Let me tell you why I say so. He is saying, look, I'm not asking to pay less taxes; I'm asking to change the shift and profile of the people who pay taxes. People who are on the land--great, fine. People who are absentee owners, who own our property but live elsewhere--better yet. People who maintain property here and are probably very active farmers, who own machinery and use it, lightening up on them in a way that we are remarkable compared to where we are. I'm not asking to tax shift, which is what I always hear; I'm asking to redistribute among those of us in my profession, to ask more of people who are not present and not very active, and less from people who are active and who rent or are on the land but who are tilling the soil. What's wrong with that...what's wrong with that idea? Where is the problem with that equation?

LARRY DIX: And as I had said, it's interesting the points

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that Senator Schrock brings up, and I'm interested, as you are, in some of those. One of the things that I think when we do that, that sort of goes back to where I think we have to really understand and study that and really take a good look at if we were to do that, if we were to do that and raise the level of value on agricultural land, really what does that do all the way across the board? There will be some of those folks that will come in here and say, okay, now that ag property is no longer taxed from a personal property point of view, then what are we going to do with business property and what should be left? There are some, I think, that would say should we have personal property at all? Personal property is probably about 5 percent of the makeup that you'll see from county to county in that base. And what our concern is the loss of the base, the continual loss of the base when we're at a constitutional lid. We don't have anywhere to go. We do not have any sales tax revenues or anything like that, and we've been seeing declining state aid. But I'm always intrigued with all the different ideas, it's just that we have a tremendous number of ideas that come forward but we never...it doesn't seem like we can ever get our arms around the whole thing to really, really solve the problem in the state of Nebraska.

SENATOR LANDIS: Larry, I would anticipate that one argument that you might make to yourself is, you know what, at least the personal property taxes that we are collecting go straight to us. They don't pass through the state to get into some kind of state aid system which then later on they can play with. If you do this through property tax or whatever, and then the state aid relies on that, and then that gets cut. At least, here's a tax base that's ours and we don't have to ask permission. Although when we have contracted the personal property tax base, what, in the last '60s or early '70s, and we invented some system for reimbursement, if you have been ill-treated anywhere, it's in the state's reimbursement of the loss of the personal property tax base in those days, isn't it? I mean, over time, that's been the biggest hit you have ever taken...

LARRY DIX: Absolutely yes.

SENATOR LANDIS: ...at our hands.

LARRY DIX: I mean, you know, you go back to that time and

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the promises of, okay, we'll eliminate that tax, but we're going to ride in behind you on the white horse and we're going to save you with the state aid. You know, in the last three years, I think we've lost \$15 million to \$20 million in state aid that probably was part of that initial agreement back in those days. Quite honestly, if we would still have all property on personal property the way we used to, we probably wouldn't have too many counties at the levy limit. There would be a much larger tax base, but we can't go back and recorrect what happened. But it does point out that at some point in time we do have to look at the complete system.

SENATOR LANDIS: The state promised to be Prince Charming and wound up being a frog, don't you think, in this area?

LARRY DIX: I sort of think so.

SENATOR LANDIS: Questions for Mr. Dix? Thank you very much. Any other testifiers in opposition? Neutral? Senator Schrock. Oh, what is that? Come on up.

TIM KALKOWSKI: Chairman Landis and members of the Revenue Committee, I am Tim Kalkowski, K-a-l-k-o-w-s-k-i.

SENATOR LANDIS: And, Tim, are you to be down as an opponent or neutral, where are you?

TIM KALKOWSKI: Opponent, though I come to testify on behalf of LB 358, I found this intriguing. The comment on absentee landowners, I would be classified as one, though my brother and myself will put in a 40-hour week on weekends, so I don't know how absentee that is. The other comment, I would be interested to know the percent of ranch ground comparative to farm ground in Nebraska, because the ranchers typically, which we are, will not have large dollar amounts of equipment. So then you burden them with additional real estate taxes, and, you know, I don't know when it's going to stop. The old adage...I'm a banker also, and ag banker...you know, if you can afford a Cadillac, you can afford the taxes on a Cadillac. People who buy the equipment do have other options, i.e. lease, if they need. If you are a landowner, you don't have the option; you have to pay the taxes. So I didn't come as prepared because I didn't expect to talk on this, but the tax situation is a

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hot issue.

SENATOR LANDIS: Oh, we hear plenty of unprepared testimony; that's okay. (Laughter)

TIM KALKOWSKI: I'm sure you do.

SENATOR LANDIS: Okay. Let's see if there are questions? Senator Baker.

SENATOR BAKER: Thank you, Senator Landis. I think we have a real live taxpayer in front of us, is that right? You would pay property tax, real estate tax at your business.

TIM KALKOWSKI: Correct.

SENATOR BAKER: And which county...where do you reside?

TIM KALKOWSKI: Well, I am in Boyd County...I reside in Lancaster County and we ranch in Boyd County.

SENATOR BAKER: Are you aware of services? We continually hear, we have "the sky is falling" with the county officials, but I have yet to have a taxpayer come to me and say we need more taxes for more, whatever, services. Are there services in Boyd County you are not getting because of a revenue shortfall up there, or...?

TIM KALKOWSKI: Not that I am aware of. Obviously, when we talk about LB 358 they're concerned about their school system in Boyd County, though I think there is a lot of school systems that are having problems.

SENATOR BAKER: County services, though; I'm talking about roads and obviously those courthouse hours and things like that.

TIM KALKOWSKI: Not that I am aware of.

SENATOR BAKER: Okay. That's what I wanted. Thank you.

SENATOR LANDIS: Questions? Thank you very much for your testimony today.

TIM KALKOWSKI: Thank you.

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SENATOR LANDIS: Senator Schrock, I think, to close. Let me just check. Any other negative testimony? Neutral testimony? Senator Schrock, to close.

SENATOR SCHROCK: I don't normally close but I do have to say a few things. God bless our county officials, and I say that as a friend of the person, you know. Larry is a friend, and Nancy from Hamilton County. I would just like to ask Nancy, when is the last time you taxed the combine of the custom harvester from Oklahoma or North Dakota that came through? They get off scot-free. And, you know, Senator Baker knows the problem just as well as I do. And have you ever considered setting up a leasing company in Kansas to own your machinery, Tom? Okay. All right. You answered my question. Now the issue of grassland, I can understand that. It would affect state aid, but in the Sandhills where it is almost all grass, they would probably lower their rate a little bit. And I would agree with him, ranchers don't own as much personal property. But if you wanted to get real complicated and technical, you could raise cropland and dry land cropland, irrigated cropland, at a little different rate, and maybe not grassland at all. I think that would be complicated.

SENATOR LANDIS: There may be a Senator Raikes matrix here that was just lurking under the subject,...

SENATOR SCHROCK: Yes, yes, yes.

SENATOR LANDIS: ...under the surface.

SENATOR SCHROCK: But I'm telling you, the longer you wait to address this issue and the more expensive farm machinery gets, the more games that I'm going to play and my constituents are going to play, and it's time to address it because farmers will end up not owning expensive machinery in this state. They can't afford to when they can lease it or put it in a different state, and that's what is taking place. And it's not just a little problem; it's getting to be a bigger problem. And I am wondering why I own a piece of machinery. Abbie, for your...you came in late, I understand...how would you like to own one of these machines?

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SENATOR CORNETT: We were just talking about that.

SENATOR SCHROCK: All right.

SENATOR LANDIS: Can it make ice cream?

SENATOR SCHROCK: What's that?

SENATOR LANDIS: Because if it can, I want one.

SENATOR SCHROCK: But, you know, Senator Raikes will tell you that you probably have to run one of these things about 250-300 hours a year to justify it. Tom owns one and it may not be new. And you probably need to combine 4,000 or 5,000 acres a year with it just to own it. And what would really be ideal, if I could get a custom harvester from the wheat belt to run it through the summertime. I've done that once and got an extra 150 hours on a machine. So there is a lot of options we have. Farming is a great life; I wouldn't give it up for anything. And these machines are fun to run; they are a dream; they are just amazing. I haven't bought a new car in 30 years but I have sure bought some machinery.

SENATOR LANDIS: Questions for Senator Schrock? Thank you very much, Ed. Appreciate it.

SENATOR SCHROCK: Thank you for your time.

SENATOR LANDIS: Let's move to Senator Raikes for our last bill of the day. How many are here to testify in favor of LB 358? In opposition? And neutral. Ron, you will be glad to know that your supporters at least matched the number of your opponents today.

SENATOR RAIKES: Unusual.

SENATOR LANDIS: It seems like a fair fight.

SENATOR RAIKES: Unusual. And this is the ideal bill for the last one on a Friday afternoon. A simple bill. Give David some aspirin, will you, before we get going?

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SENATOR RAIKES: Ron Raikes, District 25, here to introduce LB 358. Let me begin with a story. Once upon a time there were two school districts who decided to unify. Unification, you would not have maybe good reason to be totally familiar with, but that's a sort of a structural reorganization arrangement whereby school districts go together to form a single unit, but yet maintain their individual characteristics, at least to a certain extent--maybe the football teams and that kind of thing. At any rate, this happened. Two school districts went together. This marriage lasted for, I think, a couple of years. Maybe I'll be corrected by people who know the details better than I. And then it...the divorce came. Because there is not a specific procedure outlined in state statute for deunification or undoing a unification, it went through a district court. And the decision of the district court...and by the way, I don't know exactly what you've got...I think you've got something that looks like this, which is the district court decision. (Exhibit 7) If you look through that, you find the following, that one of the districts which initiated the undoing of the unification was called upon to pay back the incentive money that they received from the state because of the unification, and like other reorganizations, there were incentives paid. That seems to be a, not a big issue right here. Apparently that was agreeable to the district involved, which was Niobrara, I believe. The other district, the one that didn't initiate the judgment or the deunification, was judged to be harmed by the ending, to the tune of \$1.5 million. And that judgment, plus interest at the rate of 3.764 percent, and if you look on page 3 of 5, under VI, you'll see the paragraph beginning with "Judgment..." which describes in more detail what I'll rough out for you. So how does this happen? So we've got one part of the broken marriage, if you will, that's going to pay back the reorganization incentives. We've got the other part that is damaged to the tune of \$1.5 million. But the first party is absolved from any responsibility, so Niobrara has no responsibility for the \$1.5 million of damage done to Lynch, as it turns out. So how does Lynch get the \$1.5 million? Because it's a judgment and because judgments are outside the levy exclusions, Lynch levies itself for the \$1.5 million. Yes, Lynch levies itself for the \$1.5 million. And, I think, in fact, the way that it is working out is that they have decided to get the \$1.5 million at \$150,000 per year, which

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amounts to roughly a 30-cent additional levy. So we have gone from \$1.05 to \$1.35 as a levy lid, because it's outside the lid, and, of course, without any voter approval. A couple of characteristics of the Lynch district: They are sparse; they are a very small district. Because they are sparse, their needs are higher than a standard school district in our formula. The \$150,000 amounts to about an extra \$1,250 per student that they are entitled to levy and spend without any voter approval. And the voter approval is particularly significant, and we're wading in the details here. They have fewer than 60 students in grades 9-12, which makes them vulnerable to freeholding. So if they were to pass an override under the normal procedures, then anyone who was in that district would have the option to freehold while the adjacent landowners would have the opportunity to freehold out. With all this they're protected from all that. So we've got a situation where Lynch is levying themselves for a judgment rendered by a district court to the tune of \$150,000 a year, plus interest, which would give them an extra \$1,250 per student, and basically the landowners, the property taxpayers, have had nothing to say about it. So I have two approaches here. One of them, the green copy of the bill which is described here in the fiscal note also, eliminates the exclusion to the levy limit for schools of judgments or orders obtained against unified school systems which require taxpayers to pay such judgment to the school district. Now, I don't know why this was not anticipated when the unification statutes were drafted. Obviously, cynical; I... The other thing, the other approach, which is in the amendment, suggests that you could limit...you could say that the judgment cannot exceed ten cents over the levy cap, and exclude freeholding as a consequence. (Exhibit 8) So it would say that...well, let me read it to you so I get it correct..."or the total levy, excluding only amounts levied for bonded indebtedness, for the school district or multiple-district school system for the school fiscal year in which the petition is filed exceeds the maximum levy...by ten cents or more." That's on the amendment, that's mostly on page 2. So there are two different approaches. I think we'll hear...I hope we'll hear today from one of the taxpayers that is involved in this arrangement, a landowner in the Lynch school district. And I think we'll also hear from someone who knows a great deal more than I about the court proceeding and the way all this happened. I cannot tell you how the \$1.5 million

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amount was arrived at. I can tell you that if you...as I already have...that if you look at the needs calculation in the aid formula, this amounts to access to resources exceeding that needs calculation by more than \$1,200 a student.

SENATOR LANDIS: Is that it?

SENATOR RAIKES: I will be quiet for awhile.

SENATOR LANDIS: Don't have to be. You can keep going, Ron.

SENATOR RAIKES: No, I hope that...you know, if there are points I have missed, please bring them to my attention or the attention of the folks...

SENATOR LANDIS: Who follow you.

SENATOR RAIKES: ...following.

SENATOR LANDIS: Absolutely. Questions for Senator Raikes? Thank you, Ron. Appreciate it. One testifier in favor. Do we have any others following this gentleman who are in favor? Then we'll go to opponents after this.

TIM KALKOWSKI: (Exhibit 9) Thank you. I've got a handout out going around. Again, I am Tim Kalkowski, K-a-l-k-o-w-s-k-i, and I'm representing my family, a ranching operation, though I think Senator Raikes' office has been flooded with phone calls, there are a lot of people that would like to be here but we're in the heart of calving up there and we are one of those ranch areas. Chairman Landis and members of the Revenue Committee, I am testifying in favor of LB 358. I would like to use the Lynch school district where I am a landowner as an example as to why. Basically on your handout, these are the facts as I see them and I think they are accurate. The unification between Lynch and Niobrara was dissolved, resulting in a \$1.5 million lawsuit to be paid back by the taxpayers of the Lynch school district. Attached is the judgment which Senator Raikes referred to. Due to the dissolution of the unification, Lynch would lose \$250,000 of state funding for six years, thus the \$1.5 million--six times 250--is my understanding. From the 2004 tax assessment, the Lynch school board asked that \$146,669.76 be paid from the

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judgment. The judgment also accrues interest at a rate of 3.764 percent. Using this payment amount, this would amortize the judgment over approximately 13 years and the total interest paid would be \$424,000. It is my understanding, though, it is at the discretion of the school board as to how much money they take out. So if they took 146, they might take 300, 400, 500, next year. The lid law in Nebraska is 1.05 percent, and Lynch is currently at 1.36862200 percent. By using the judgment, the school board could bypass the vote of the people, ignore the lid law, and stop landowners from removing their land from the school district. Our taxes increased by 1.21 percent, from \$4.79 an acre to \$5.80 an acre, without an increase in valuation. We had no increase in Boyd County. Our total increase in real estate taxes was \$5,457. We pay 3.29 percent of the total tax request for the school district. My last page in your handout is one example from ground that we own. The top half is the 2004 real estate statement. The bottom half is the 2003. You can compare them. Also this year they did something. They put the...on that top portion they put the prior year's tax versus the current so you can just look across and see how everything has increased or decreased. And you will notice, all the other levies stayed pretty constant. Some went down. A couple went up by a small amount. And then you see the school general. The concerns that we have, and I've listed seven, is basically the school board has an open checkbook on how and when to spend the proceeds of the judgment without any input of the taxpayer. Now I understand that you can vote for who is on the school board, but other than that they have no say. The school board does as they wish because it's a judgment. How can the Lynch school board bypass the state lid law and our constitutional rights to a vote? Because there was not a vote,...and that's significant here because the reason there was, you know, they did a judgment is because there would not be a vote,...thus we cannot remove our land from the school district even though there have been fewer than 60 students in grades 9-12 for two consecutive school fiscal years and this school is within 15 miles of another school, as described in statute 79-458. In other words, to meet the statute, you meet the three criteria: fewer than 60 students, 15 miles away from another school, and a vote. Since we didn't vote, you cannot freehold. How much more can the taxpayers be expected to pay? Again, you know, what if they decide to do 300 next year? Will any other school

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district work with the Lynch school district, knowing that there is an outstanding judgment that needs to be paid? Who is monitoring that the principal and interest is applied correctly and on a timely basis? Being in banking, I understand what a large sum of money does if it is not applied to principal. Based on a 13-year pay down, the judgment is really for \$1,924,000 when you add in the interest. In theory, land valuation should decrease due to the added expenses that the additional taxes have created and the corresponding effect on cash flows. In other words, my asset has become less due to this judgment. I just conclude in saying that we hope that there is something that we can do about this and that there has got to be a better way to finance our schools than where you have to sue yourself in order to meet the budget. And I'd answer any questions.

SENATOR LANDIS: Let's see if there are questions for Mr. Kalkowski, who has traveled a long way to get here.

TIM KALKOWSKI: Actually, I am a Lancaster resident.

SENATOR LANDIS: Huh. Oh, that's right, you're here and the land is out there.

TIM KALKOWSKI: Yes. But we're up there a lot.

SENATOR LANDIS: Got it. Okay. Questions for Mr. Kalkowski? Thank you, Tim. Appreciate it.

TIM KALKOWSKI: Thank you.

SENATOR LANDIS: First testifier in opposition. Following this testifier, are there other opponents? Neutral testimony? This is our last testifier of the day and Senator Raikes has a chance to close.

REX SCHULTZE: Good afternoon, members of the committee, senators, counsel. My name is Rex Schultze. I'm an attorney from Lincoln, Nebraska. I am also legal counsel for the Lynch Public School District and obviously a divorce lawyer.

SENATOR LANDIS: (Laugh)

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REX SCHULTZE: Wow. I think for the senators to understand how we got here, you need to understand a little background. Senator Raikes talked unification. Unification is a concept very much like a marriage. It's unlike school reorganization where you...where two school districts or three school districts become one. Unification, as Senator Raikes indicated, is we have two school districts that get married and if they don't like each other over a period of time, evidently they can get divorced. Unfortunately, when the unification statutes were promulgated some years ago, there was no mechanism for divorcing unified systems. As such, we were presented with the circumstance where we had two school districts that went together in unification. One decided they didn't want to be married anymore and the other one had determined that it was joining itself for purposes of providing education to its students, and its financial circumstance was tied to that whole entire concept. And it had established and planned its educational program on the premise that it was going to receive a certain level of revenue. As Senator Raikes indicated, the unified system was designated as a sparse school district and therefore it received a sparsity factor in the receipt of its state aid. When it was unified with Niobrara, that sparsity factor which Lynch brought to the unified system produced \$250,000 a year in additional state aid. And \$250,000 a year in additional state aid allowed the two schools districts combined to produce and provide an educational program for the students of their communities. When Niobrara chose to remove itself from the unified system, that money automatically went away because it was their students, in part, that produced that revenue. The difficulty was, was that that was a damage, in our mind, to the Lynch Public Schools because that resulted in a loss of revenue to the entire system. Therefore we, as part of our...and let me segue just for a moment...because there was no mechanism to dissolve this unified system, the only recourse we had was to go to the district court of Knox County and file what is called a declaratory judgment action. Essentially, a unified system is set up by an interlocal agreement, and the declaratory judgment is a means of determining the contract rights of individual parties to a contract. That's why we went there. I won't go into all of the details of the declaratory judgment except to say that there were many issues involving funding of the educational program of both districts that were involved in that judgment. If you take

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a look at the judgment that you were provided by Senator Raikes and I believe Mr. Kalkowski, you will see that not...this judgment that is at issue here was not the only revenue issue that was addressed in that judgment, and it involved the distribution of monies in a very complex manner. And, in fact, I believe next Monday, LB 357 is going to be heard by the Education Committee, which is a bill to deal with how unified systems are dissolved, so we have prospective legislation. But legislation we did not have is much like we didn't have legislation like I believe the number is LB 198, which is currently being proposed to soften the blow in the assimilation bill for school districts who are going to lose property by reason of losing the tax base from Class I school districts. We didn't have that safety net here for Lynch. Because Lynch was going to lose that revenue, the only recourse we had was to seek to provide a mechanism for a judgment against the unified system. You have to remember that the unified system was a combination of both school districts--the unified board of education was made up of three members for the Lynch district and three members from the Niobrara district. Therefore, what really happened in the summer of 2003, was that board was at a point where they were at an impasse. They couldn't pass anything; they couldn't do anything. And so we had to put the school district into receivership. And so therefore the damage that was done to Lynch was done by the unified system. So, indeed, the judgment was entered against the unified system, and then the judgment was assigned, as you can read in the judgment, to the Lynch Public School District. Now, while I understand Mr. Kalkowski's concerns, our concerns were educational. Our concerns were how are we going to provide the educational program that was promised to the patrons of the Lynch Public School District and plan for during the term of the agreement. The agreement, by statute, was contemplated to continue for a period actually through nine fiscal years. So what you get with regard to this is we have the loss of \$250,000 in revenue, and we had six fiscal years remaining on the contract, and when we went and saw Judge Rogers in this regard and discussed this issue with him and presented the evidence to Judge Rogers, that's...we proceeded to feel and present to him the concept that that opportunity to raise those funds was lost and it needed to be replaced. Now, with regard to the legislation that's proposed, I want to make a couple of comments. We've already spent nearly two

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years in litigation over this issue. Lynch is trying to get itself back up and operating as a separate school district. The judgment itself, and we can get into...and I'm not going to get into a legal argument as to whether or not legislation passed after the entry of the judgment can be effective, but I would say this: This clearly constitutes special legislation. This is legislation to address one issue with one school district over a circumstance that was not created by that school district's doing, a circumstance that that school district sought to make the best out of a really, really difficult situation. This is not a circumstance that is likely to repeat itself. We had a circumstance which I would call an equitable circumstance that the court attempted to make right. With regard to the exercise of the pay back of the judgment, I think that the board of education has acted in a prudent manner. I would tell you that Mr. Kalkowski's comments with regard to the amount that was levied for this year, \$146,669.76, shows that prudence. The board of education, again, is seeking to apply this in a proper and appropriate manner.

SENATOR LANDIS: Rex, the upshot of your argument, because rather than going back through what seems to me the court case, your point is what? That there has been no action taken for which this bill provides appropriate remedy? That what happened, happened; it happened legitimately; the outcomes are legitimate, and this bill doesn't make sense because of that?

REX SCHULTZE: That's correct. That's essentially what I'm saying. What I'm saying is, is it was a legitimate thing to do. It was an appropriate resolution made by the court, and this legislation does not really address that.

SENATOR LANDIS: And this resolution is not retroactive, is it? I'm asking if it is retroactive. I think it's not. It operates for the next time this should ever happen,...

REX SCHULTZE: That would be my opinion.

SENATOR LANDIS: ...does it not?

REX SCHULTZE: That would be my legal opinion and it would also be in my opinion that the law as it exists at the time of judgment is rendered is the law applicable to that

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judgment into the future. And if you read the judgment, it was carefully drafted in that regard.

SENATOR LANDIS: Are there questions for Mr. Schultze? Thank you, Rex. Appreciate your testimony.

REX SCHULTZE: Thank you very much.

SENATOR LANDIS: Other testimony in opposition? Closing, Senator Raikes? Waives closing. That's our last testifier for the day and our last bill for the day. Thank you very much for coming.